

From: Craig Johns [mailto:cjohns@calrestrats.com]  
Sent: Tuesday, February 01, 2005 5:28 PM  
To: Doduc, Tam  
Cc: Hall, Timothy; Smith, Dmitri; Lloyd Ph.D., Alan C.; Cindy Tuck; Tim Shestek; Victor Weisser; 'Dave Arrieta'; Greg Merrill; Bob Lucas; Jackson Gualco  
Subject: Cal/EPA's Environmental Justice Action Plan - Draft Phase I Implementation Proposals

Dear Ms. Doduc:

The Partnership for Sound Science in Environmental Policy (PSSEP) is a coalition of municipal agencies, businesses, trade associations and others who are concerned about the proliferation of environmental regulations that are not predicated on sound, objective science. PSSEP has followed the development of Cal/EPA's Environmental Justice Action Plan, Draft Phase I Implementation Proposals (1/14/05 version), and offer the following comments.

PSSEP supports and endorses the comments and specific requests contained in the letter dated January 31, 2005 from the California Council for Environmental and Economic Balance, signed by Vic Weisser. CCEEB's thoughtful and balanced comments about the proposed Implementation Proposals should be given significant weight by Cal/EPA due to its long-standing involvement with this issue, and the many business and environmental interests it represents.

PSSEP strongly agrees with CCEEB's position (Comment 3 - Social Factors) on the definition of "multi-media cumulative impacts." If the Cal/EPA Environmental Justice program is to have any credibility, it must remain objective, balanced and predictable. That is, the "cumulative impacts" of particular actions, processes or projects must be quantitatively determinable, and free from ambiguous application. Social factors such as "crime rates", "dilapidated housing", "emotional stress" and the like, while properly of concern in the appropriate context, are not the kinds of impacts that can be readily analyzed for determining the scope or degree of impacts associated with a proposed project, action or process. We urge Cal/EPA to define "cumulative impacts" in a way that provides meaningful information to policymakers and project planners alike, so that important environmental justice issues are decided objectively and credibly, instead of merely providing a convenient excuse or rationale for stopping any kind of project, process or action.

PSSEP also supports CCEEB's position ("Proposed Definition of "Precautionary Approach") regarding the appropriate way to define this potentially controversial term. Specifically, PSSEP urges Cal/EPA to adopt the following definition for "Precautionary Approach":

"Precautionary Approach" means taking action to protect public health and the environment if a reasonable threat of serious or irreversible harm exists based upon the best available science, even if absolute and undisputed scientific evidence is not available to determine the exact nature and extent of the risk."

The inclusion of "serious or irreversible" to describe the threat of harm to be avoided is vitally necessary in order to avoid needless controversy that is inevitable if the Cal/EPA definition triggers "action" at the mere allegation that a "reasonable threat of harm" exists. One problem with the simplistic "reasonable threat of harm" standard is that it substantially reduces the standard of review in considering whether the State's "precautionary approach"

is to be implemented to stop a particular process, action or project. Is this standard to be something "less than a preponderance", "50% plus one", or "just a little bit"? Moreover, the proposed standard would merely require a showing of any level of harm to trigger the "precautionary approach" and the concomitant prohibitions that will inevitably follow. Thus, if a project opponent can demonstrate that the project will reasonably result any amount of harm - - regardless of how de minimis - - then the "precautionary approach" as defined in Cal/EPA's current proposal would arguably require the BDOs to prohibit or substantially limit the project, action or process. This is hardly a paradigm of good planning or good government.

Aside from making the process of planning infrastructure, energy, housing and other projects nearly impossible (who's to say what's "reasonable"?), the proposed definition as presented simply has no basis in any objective effort to implement a "precautionary approach."

Indeed, as noted in the CCEEB letter, the US Commission on Ocean Policy, the UN Rio Declaration and the Canadian Government have all adopted the more balanced "serious or irreversible harm" standard. Furthermore, even the City and County of San Francisco have opted for the "serious or irreversible damage" standard instead of the more ambiguous definition proposed by Cal/EPA.

If Cal/EPA is serious about implementing a truly "precautionary approach" through its BDOs, it is imperative that the Plan remain free of ambiguous and undefinable standards or directives. One concern we have is that, if the lower-threshold "reasonable threat of harm" standard is employed, virtually EVERY proposed action, process or project (regardless of the societal or community value associated with them) will be deemed to have unacceptable impacts under the EJ policy. As a result, much-needed projects (e.g., development of new road to alleviate traffic congestion and thus abate air pollution impacts) will be prohibited, and truly problematic actions or projects will not receive potentially needed review.

Thank you for the opportunity to provide these comments. Please add my name to future public notices about upcoming hearings, workshops and meetings associated with Cal/EPA's Environmental Justice Action Plan and related initiatives.

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